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REQUEST FOR THE INCLUSION OF AN ITEM IN THE PROVISIONAL AGENDA OF THE FIFTY-SECOND SESSION

AMENDMENT TO ARTICLE 13 OF THE STATUTE OF THE UNITED NATIONS ADMINISTRATIVE TRIBUNAL

Note by the Secretary-General

1. Pursuant to rule 13, subparagraph (g) of the rules of procedure of the General Assembly, which provides that the provisional agenda of a regular session shall include items which the Secretary-General deems it necessary to put before the Assembly, the Secretary-General requests that the following item be included in the provisional agenda of the fifty-second session of the General Assembly:

> "Amendment to article 13 of the statute of the United Nations Administrative Tribunal"

2. As required by rule 20 of the rules of procedure of the General Assembly, an explanatory memorandum concerning this item will be submitted at a later date.

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Request for the inclusion of an item in the provisional agenda of the fifty-second session

Amendment to article 13 of the statute of the United Nations Administrative Tribunal

Note by the Secretary-General

Addendum

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Annex

Explanatory memorandum

1. The competence of the United Nations Administrative Tribunal is defined in article 2 of its statute,[1] which provides that the Tribunal is competent to hear and pass judgement upon applications alleging non-observance of contracts of employment of staff members of the Secretariat of the United Nations or the terms of appointment of such staff members.

2. In accordance with the statute, the competence of the Tribunal may, in addition, be extended to specialized agencies. Article 13 of the statute states the following in this regard:

> "The competence of the Tribunal may be extended to any specialized agency brought into relationship with the United Nations in accordance with the provisions of Articles 57 and 63 of the Charter [of the United Nations] upon the terms established by a special agreement to be made with each such agency by the Secretary-General of the United Nations. Each such special agreement shall provide that the agency concerned shall be bound by the judgements of the Tribunal and be responsible for the payment of any compensation awarded by the Tribunal in respect of a staff member of that agency and shall include, *inter alia*, provisions concerning the agency's participation in the administrative arrangements for the functioning of the Tribunal and concerning its sharing the expenses of the Tribunal."

I. Staff of the Registry of the International Court of Justice

3. In accordance with the relevant provisions of the Statute and the Rules of Court, the staff of the Registry of the International Court of Justice is subject to Staff Regulations approved by the Court.[2] Article 11 of the Regulations establishes an appeals system which provides for the election by the Court of one of its members as a Judge for Staff Appeals, who is to "examine any appeal by a staff member against an administrative decision of the Registrar alleging the non-observance of the staff member's terms of appointment, including all regulations and rules applicable to the staff of the Registry, or against disciplinary action", and is to "endeavour to bring about a speedy solution of the matter in conformity with the relevant rules and regulations". The article further provides that "if no such solution has been reached, the Judge for Staff Appeals shall at the request either of the staff member or the Registrar refer the matter to the Court for settlement according to the procedure which the Court may prescribe".

4. In a letter dated 17 April 1997, the President of the International Court of Justice informed the Secretary-General that the Court had recently taken up the question of improving the existing appeals system and had noted that the General Assembly by its resolution 50/54 of 11 December 1995 had abolished the procedure for review of Administrative Tribunal judgements that had been laid down by article 11 of the statute of the Tribunal. The Assembly had thus put an end to the possibility that the Court might render advisory opinions on the judgements handed down by the Tribunal. The Court had consequently decided to modify the appeals system currently available to the staff of the Registry in order to permit the extension to the Registry staff of the jurisdiction of the United Nations Administrative Tribunal. The Court, consequently, adopted an amendment to the aforementioned article 11 of the Staff Regulations for the Registry, to provide that:

> "In the event of a failure to achieve a conciliation, the administrative decision or disciplinary action may be the subject of an application to the United Nations Administrative Tribunal, in accordance with the statute of that Tribunal and under the conditions to be determined in an exchange of letters between the President of the Court and the Secretary-General of the United Nations."

5. As the statute of the Tribunal at present does not provide for the exercise of its competence in respect of the staff of the Registry, the entry into force of the above amendment is subject to an appropriate modification by the General Assembly of that Statute. The President of the Court, therefore, asked the Secretary-General to arrange for the inclusion of this matter in the agenda of the fifty-second session of the General Assembly.

6. The arrangement proposed by the Court could be accommodated either by adding a new paragraph to article 13 of the statute of the Tribunal, which would become paragraph (a) of that article, or by adding a new article 14, reading, in language proposed by the Court, as follows:

> "The competence of the Tribunal will be extended to the staff of the Registry of the International Court of Justice upon the exchange of letters between the President of the Court and the Secretary-General of the United Nations establishing the relevant conditions."

II. Jurisdiction of the United Nations Administrative Tribunal in cases of alleged non-observance of the Regulations of the United Nations Joint Staff Pension Fund

7. Pursuant to article 3 of the Regulations of the United Nations Joint Staff Pension Fund (UNJSPF), as adopted by the General Assembly, membership in the Fund is open to the specialized agencies referred to in Article 57, paragraph 2, of the Charter of the United Nations and to any other international, intergovernmental organization that participates in the common system of salaries, allowances and other conditions of service of the United Nations and the specialized agencies.[3] Admission to membership in the Fund is by decision of the General Assembly, upon an affirmative recommendation of the United Nations Joint Staff Pension Board.

8. In addition, under article 48 of the Regulations of the Fund, any participant in the Fund who is a staff member of a member organization that has accepted the jurisdiction of the Tribunal in Joint Staff Pension Fund cases may submit to the United Nations Administrative Tribunal an application alleging non-observance of the Fund Regulations arising out of the decision of the Pension Fund Board. At the time when it added this provision to the Pension Fund Regulations, the General Assembly also appealed to the member organizations of the Fund to arrange for such acceptance. At present, all 18 organizations (in addition to the United Nations) participating in the Fund have done so.

9. The aforementioned competence of the United Nations Administrative Tribunal in Joint Staff Pension Fund cases, which, as noted above, was approved by the General Assembly,[4] is not reflected in the statute of the Tribunal. It is therefore suggested that that statute be brought into conformity with that decision of the General Assembly by adding the following new paragraph, based on article 48 of the Pension Fund Regulations, to article 13 of the Tribunal's Statute, which would become paragraph (b) of that article:

> "The Tribunal shall be competent to hear and pass judgement upon applications alleging non-observance of the Regulations of the United Nations Joint Staff Pension Fund arising out of the decision of the United Nations Joint Staff Pension Board submitted to the Tribunal by:
>
> "(i) Any staff member of a member organization of the Fund which has accepted the jurisdiction of the Tribunal in Joint Staff Pension Fund cases who is eligible under article 21 of the Pension Fund Regulations as a participant in the Fund, even if his/her employment has ceased, and any person who has acceded to such staff member's rights upon his death;
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> "(ii) Any other person who can show that he is entitled to rights under the Pension Fund Regulations by virtue of the participation in the Fund of a staff member of such member organization."

III. Extension of the competence of the United Nations Administrative Tribunal to other international organizations and entities participating in the common system of conditions of service

10. The United Nations has recently concluded or is in the process of finalizing relationship agreements with a number of international organizations and entities such as the International Seabed Authority, the International Tribunal for the Law of the Sea and the Organization for the Prohibition of Chemical Weapons. During the negotiations of these agreements, these organizations and entities have expressed interest in an arrangement that could allow the extension of the competence of the United Nations Administrative Tribunal to their staffs. It is worth noting in this regard that the above agreements provide for the application by their parties of common personnel standards, methods and arrangements, which is also a requirement to become a member of UNJSPF pursuant to the above-mentioned article 3 of the Regulations of the Fund.

11. As indicated in paragraph 2 above, pursuant to article 13 of the Tribunal statute, the competence of the United Nations Administrative Tribunal can at present be extended only to specialized agencies. Article II, paragraph 5, of the statute of the Administrative Tribunal of the International Labour Organization (ILO) provides in this regard that that Tribunal is competent to hear complaints submitted by officials of any other intergovernmental international organization approved by the Governing Body of ILO which has addressed to the Director-General of ILO a declaration recognizing, in accordance with its own Constitution or internal administrative rules, the jurisdiction

of the Tribunal for that purpose, as well as its rules of procedure.

12. In the light of the foregoing, the Secretary-General believes that it would be useful to amend article 13 of the statute of the United Nations Administrative Tribunal by including a new paragraph providing that the competence of the Tribunal may be extended to international organizations and entities participating in the common system of conditions of service. Such a paragraph, which should be the last paragraph, paragraph (d), of a revised article 13, could read as follows:

> "The competence of the Tribunal may also be extended, with the approval of the General Assembly, to any other international organization or entity established by a treaty and participating in the common system of conditions of service, upon the terms set out in a special agreement between the organization or entity concerned and the Secretary-General of the United Nations. Each such special agreement shall provide that the organization or entity concerned shall be bound by the judgements of the Tribunal and be responsible for the payment of any compensation awarded by the Tribunal in respect of a staff member of that organization or entity and shall include, *inter alia*, provisions concerning its participation in the administrative arrangements for the functioning of the Tribunal and concerning its sharing the expenses of the Tribunal."

IV. Conclusion

13. If the General Assembly approves the recommendations set out in sections I to II above, the text set out in paragraph 6 would then become paragraph (a) of article 13, the text set out in paragraph 9 above would then become paragraph (b), the text of the present article 13 of the statute of the Tribunal as set out in paragraph 2 above would become paragraph (c), and the text set out in paragraph 12 above would become paragraph (d).

Notes

[1] AT/11/Rev.4.

[2] International Court of Justice, Rules of Court, Article 28, paragraph 4.

[3] JSPB/G.4/Rev.14.

[4] General Assembly resolution 955 (X) of 3 November 1955